



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

ROBERTO SEMEIA

Serial No. 10/626,515

Art Unit: 3673

Filed: July 25, 2003

Examiner: Jong Suk Lee

For: RETAINER DEVICE FOR FREE LOOSE ENDS OF TIGHTENING OR FASTENING STRAPS OR BELTS, OR THE LIKE, PARTICULARLY IN ARTICLES FOR WEARING, AND BUOYANCY COMPENSATOR VEST HAVING SUCH A DEVICE

RESPONSE

To the Commissioner of Patents and Trademarks

Sir:

In response to the Office Action mailed July 21, 2004, kindly consider the following:

Applicant provisionally elects Group I drawn to a retainer device, **with traverse**. Claims 1-36 and 44 read on the elected species.

Reconsideration and withdrawal of the election requirement are requested.

The claims of Groups I, II, and III do not relate to materially different products. The products defined by Groups II and III relates to the product, per se, described in the claims of Group I.

They are not related to materially different products that would result in use for different purposes nor can they be used to practice a different invention than that intended and claimed.

For instance, the claims clearly define the retainer (Group I) as being part of the vest of Group II and the retainer being the D-ring of Group III. Such a device cannot have the different applications contemplated by the examiner.

The inventions as described in the claims are neither independent nor distinct. In fact, the inventions as claimed arise from the same inventive effort. Where inventions are neither independent nor distinct, restrictions should not be required. Where inventions arise from the same inventive effort, restriction should not be required.

MPEP § 802.01 points out that a sub-combination and a combination are not independent inventions, and that a process and an apparatus used in the practice of the process are not independent inventions. That same section points out that independent means that there is no disclosed relationship between the subjects disclosed.

The examiner has not made any requirement based on the subject matter being independent. Therefore it is understood that the examiner concedes that the subject matter is not independent.

The examiner's requirement for restriction is based upon a holding that the subjects are distinct. That is, as pointed out in MPEP § 802.01, the examiner has held that the subject matter as claimed:

are capable of separate manufacture, use or sale as claimed,
AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER.

The examiner has held under MPEP § 803 that the claimed

inventions:

are able to support separate patents and they are ...
distinct (MPEP § 806.05-806.05(i)).

However, MPEP § 803 unequivocally states:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

So that § 803 makes its point clearly, the serious burden requirement is repeated under the title:

CRITERIA FOR RESTRICTION BETWEEN
PATENTABLY DISTINCT INVENTIONS

MPEP § 803 goes on to state that there are two criteria for a restriction requirement: one, that the inventions must be distinct as claimed; and two, that there must be a serious burden on the examiner if restriction were not required.

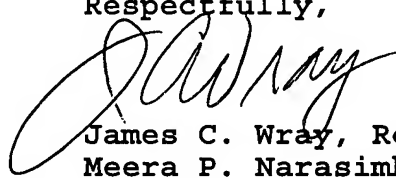
Section 803 goes on to state under GUIDELINES that the examiner must provide reasons and/or examples to support conclusions. The examiner has not provided reasons to show that there would be a serious burden on the examiner if restriction were not required. Indeed, there should be no serious burden on the examiner for Groups I and III because the Examiner will have to search all the subclasses under class 224 and therefore the search of Group I claims 1-36, 44 would also involve a search for Group III claims 41-43 which Groups are both in class 224. Thus, claims 1-36 and 41-44 should be considered together and not be restricted to one or the other Group. Likewise the buoyancy compensator vest of Claims 37-40 relate to retainer devices for the vests and should also be considered together with Groups I

and III, i.e., claims 37-40 should be considered together with claims 1-36 and 41-44.

For the above reasons, Applicant believes that the claims should be examined together. Hence, the Examiner should kindly withdraw the restriction and consider claims 1-44 together.

Reconsideration and withdrawal of the requirement are respectfully requested.

Respectfully,

A handwritten signature in black ink, appearing to read 'J. Wray', is written over the typed name.

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